IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7416 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHANTILAL VIRJIBHAI AJMERIA

Versus

CHIEF CONTROLLING REVENUE AUTHORITY

Appearance:

1. Special Civil Application No. 7416 of 1999

MR SANDEEP N BHATT for Petitioner No. 1

Mr.M.K.Patel, AGP for respondents

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 05/04/2002

ORAL JUDGEMENT

Rule. Mr.M.K.Patel, Ld.AGP appears and waives service of rule on behalf of respondents. With the consent of parties matter is finally heard today.

2. The present petition is preferred by the

petitioner for quashing the order dated 20.2.99 passed by the Deputy Collector, respondent No.2 herein whereby the petitioner is called upon to pay the balance stamp duty.

3. Mr.Bhatt for the petitioner submitted that the order dated 20.2.99 was passed without considering the proper facts produced by the petitioner. He further submitted that in any case after the order dated 20.2.99 the petitioner on 13.3.99 directly preferred appeal to the Chief Revenue Controlling Authority of Gujarat State, but the petitioner was communicated as per letter dated 12.5.99 that the petitioner should prefer appeal under section 32B of the Bombay Stamp Act to the Deputy Collector. Mr.Bhatt also submitted that on 20.3.99 the petitioner made application to the Deputy Collector copy whereof is at annexure "C" for either withdrawal of the order or in the alternative in the para 4 of the application requested that the matter may be referred to the Chief Revenue Controlling Authority by way of reference and in the said application, Mr.Bhatt submitted, that a request for waiving condition of depositing 25% of the amount.

4. Mr.M.K.Patel, Ld.AGP appearing for respondents submitted that against the order of the Deputy Collector appeal can be preferred under section 32B of the Act but the petitioner as per the procedure has to prefer the appeal to the Deputy Collector and the Deputy Collector shall forward the appeal to the Chief Revenue Controlling Authority. The application dated 20.3.99 is given for the composite reliefs and therefore can not be considered as application for reference of appeal to the Chief Revenue Controlling Authority.

5. Considering the facts and circumstances of the case and the perusal of the record, this petition against the order dated 22.2.99 can not be accepted for the simple reason that the appeal under section 32B of the Act is permitted under statute and since the alternative remedy is available this petition can not be entertained at this stage. However, at the same time, since the application/appeal dated 20.3.99 was also preferred by the petitioner copy whereof is annexed at annexure C to the petition same can be treated as appeal for making reference to the Chief Revenue Controlling Authority and the Chief Revenue Controlling Authority shall consider the case as to whether the deposit of 25% of amount should be waived or not and the appeals can be permitted to be heard in accordance with law. I am of the view that if such order is passed considering the application dated 20.3.99 as appeal no prejudice would be caused to

the Govt.

6. Under the above circumstances, the Deputy Collector, Stamp Duty, Rajkot is directed to consider the application dated 20.3.99 preferred by the petitioner copy whereof is annexed at annexure C to the petition as appeal and it is further directed that the reference may be made by the Deputy Collector under section 32B of the Act to the Chief Revenue Controlling Authority. It is further directed that the respondent No.1 herein shall first take decision as to whether the condition for depositing is satisfied and if decision is taken by the Chief Revenue Controlling Authority to waive the condition of deposit, then the appeal shall be taken for hearing and same shall be decided in accordance with law within a period of six months from today. However, it will be for the Chief Controlling Revenue Authority to decide as to whether the condition of deposit of 25% should be waived or not and no opinion is expressed.

7. In view of the above, petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

5.4.2002 (JAYANT PATEL,J)